

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI  
ST. JOSEPH DIVISION**

SUSAN JOHNSON, ROBERT	)	
JOHNSON and COZY KITTENS	)	
CATTERY, LLC,	)	Case No.: 08-6103-CV-SJ-DW
	)	
Plaintiffs,	)	
	)	
v.	)	(Removed from the Circuit Court
	)	of Putnam County, Missouri
ELIZABETH ARDEN d/b/a	)	Case No.: 08AJ-CV00047)
ComplaintsBoard.com,	)	
MICHELLE REITENGER,	)	
COMPLAINTSBOARD.COM,	)	
INMOTION HOSTING, INC.,	)	
MELANIE LOWRY, and	)	
KATHLEEN HEINEMAN,	)	
	)	
Defendants.	)	

**DEFENDANT HEINEMAN'S NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. §§ 1331, 1332, 1441 and 1446, Defendant Kathleen Heineman, by and through her undersigned counsel, hereby provides notice of the removal of the above-captioned matter from the Circuit Court of Putnam County, Missouri to the United States District Court for the Western District of Missouri, St. Joseph Division, and states as follows:

1. According to available online docket information, Plaintiffs Susan Johnson, Robert Johnson and Cozy Kittens Cattery, LLC (collectively, "Plaintiffs") filed an action styled *Susan Johnson, et al. v. Elizabeth Arden d/b/a ComplaintsBoard.com, et al.*, Case No. 08AJ-CC00047, in the Circuit Court of Putnam County, Missouri on or about June 26, 2008 (the "Action"). Plaintiffs' counsel contends that Ms. Heineman was served with the Summons and

Petition in the Action on September 9, 2008.<sup>1</sup> A true and correct copy of the Summons and Petition (“Petition”) are attached hereto as **Exhibit A**.

2. The available online docket information reflects that summons have been issued and returns of service have been filed for defendants InMotion Hosting, Inc. and Melanie Lowry and that a default judgment on liability has been entered against Ms. Lowry. It does not appear that summons have issued nor that service has been made on any of the other named defendants. *See* Affidavit of Stacey R. Gilman (“Gilman Affidavit”), attached hereto as **Exhibit B**, at ¶ 7, Exhibit 2 (online docket). InMotion Hosting, Inc., the only other purportedly served defendant who has not contested service joins in this removal. *See* Exhibit B, Gilman Affidavit at ¶ 8.a, Exhibit 3 (InMotion’s executed joinder). Likewise, Ms. Lowry, though she does not concede service, joins in the removal. *See id.* at ¶ 8.b, Exhibit 5 (Ms. Lowry’s letter of joinder). As detailed in the attached Gilman Affidavit, good faith efforts have been made to locate and contact all other named defendants, none of whom appear to have been served. *See id.* at ¶ 8.c, and Exhibit 4. No other named defendant has responded to these efforts, nor have they voiced any opposition to this removal. *See id.*

3. As more fully set forth below, this Action properly is removed to this Court pursuant to 28 U.S.C. § 1441 because Ms. Heineman has satisfied the procedural requirements for removal and this Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 (diversity jurisdiction) and also pursuant to 28 U.S.C. § 1331 (federal question jurisdiction).

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<sup>1</sup> Contrary to the proof of service filed by Plaintiffs, service, in fact, has never been properly effected on Ms. Heineman in this case, on September 9<sup>th</sup> or otherwise.

## I. Procedural Statement

4. Plaintiffs purportedly served the Summons and Petition on Ms. Heineman in Colorado via Missouri's long-arm statute on September 9, 2008.<sup>2</sup> Accordingly, this Notice of Removal has been filed timely within thirty (30) days of this alleged service pursuant to 28 U.S.C. 1446(b).

5. Pursuant to 28 U.S.C. § 1446(a), a true and correct copy of the Summons and Petition ("Petition") are attached hereto as **Exhibit A**. A true and correct copy of the Notice of Filing of Return of Service received by counsel for Ms. Heineman in Colorado from Plaintiffs' counsel is attached hereto as **Exhibit C**.

6. To date, the attached documents include the only process, pleadings or orders received by Ms. Heineman in the state court Action. No proceedings pertaining to Ms. Heineman have occurred in the Circuit Court of Putnam County, and Ms. Heineman has not filed an answer or other responsive pleading to the Petition. Thus, Ms. Heineman reserves the right to assert any and all defenses to the Petition under applicable federal and state law, including without limitation all defenses available under Federal Rule of Civil Procedure 12 and, further, Ms. Heineman reserves the right to amend or supplement this Notice of Removal.

7. Removal venue lies in the United States District Court for the Western District of Missouri, St. Joseph Division, pursuant to 28 U.S.C. § 1441(a), because that district and division embrace the Circuit Court of Putnam County, Missouri, the place where this action currently is pending.<sup>3</sup>

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<sup>2</sup> Ms. Heineman does not concede that service has been properly effectuated in this case and does not consent to jurisdiction or venue in the State of Missouri.

<sup>3</sup> Ms. Heineman does not, however, concede that venue is proper in this Court or elsewhere in Missouri, and reserves her right to contest said venue, including *inter alia* pursuant to Federal Rule of Civil Procedure 12(b)(3) and the doctrine of *forum non conveniens*.

8. Pursuant to 28 U.S.C. § 1446(d), Ms. Heineman promptly will file a copy of this Notice of Removal with the Circuit Court of Putnam County, Missouri and give written notice of the removal of this action to Plaintiffs' counsel and to the named defendants (or their counsel of record) to the extent contact information for them is known.

## **II. Diversity Jurisdiction**

9. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332(a) because there exists complete diversity among the parties, and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

### **A. Complete Diversity of Citizenship Exists.**

10. According to the Petition, Plaintiffs Robert Johnson and Susan Johnson are residents and citizens of the State of Missouri. *See* Exhibit A, Petition ¶ 1.

11. According to the Petition, Plaintiff Cozy Kittens Cattery, LLC is a citizen of the State of Missouri, is registered with the Missouri Secretary of State as a limited liability company and maintains its principal office and place of business in Missouri. *See* Exhibit A, Petition ¶ 2. According to the Petition, the sole members of Plaintiff Cozy Kittens Cattery, LLC are Plaintiffs Robert Johnson and Susan Johnson, who are citizens of the State of Missouri. *See* Exhibit A, Petition ¶¶ 1, 2.

12. According to the Petition, Defendant InMotion Hosting, Inc. is a corporation organized and existing under the laws of the State of California, and it maintains its principal office and place of business in California. *See* Exhibit A, Petition ¶ 3. Pursuant to 28 U.S.C. § 1332(c)(1), Defendant InMotion Hosting, Inc. is a citizen of the State of California.

13. According to the Petition, Defendant Melanie Lowry is a citizen and resident of the State of California. *See* Exhibit A, Petition ¶ 8.

14. As alleged in the Petition, Defendant Kathleen Heineman is a citizen and resident of the State of Colorado. *See* Exhibit A, Petition ¶ 7; *see also* Exhibit B, Gilman Aff. at ¶ 5.

15. Although apparently no summons has issued and no service effected upon them, the Petition also purports to name as collective defendants<sup>4</sup> ComplaintsBoard.com and two persons, named as Elizabeth Arden and Michelle Reitenger, in their capacities as alleged operators of that website. *See* Exhibit A, Petition at ¶¶ 4-6. Upon information and belief, ComplaintsBoard.com is a domain name operated in California and registered to Elizabeth Arden, who is a citizen of the State of California. *See* Exhibit B, Gilman Affidavit ¶ 6 and Exhibit 1 (“WhoIs” Domain Data for ComplaintsBoard.com, documenting that the organization name for the domain name “complaintsboard.com” is Elizabeth Arden and the organization address for the domain name “complaintsboard.com” is in Emeryville, California). Upon information and belief, none of these named defendants is a Missouri citizen or resident and all are believed to be California citizens. *See id.*

16. Because Plaintiffs are citizens of Missouri and Defendants are citizens of other states, namely California and Colorado, the jurisdictional requirement of complete diversity of citizenship required for removal is satisfied. *See* 28 U.S.C. § 1332(a)(1).

**B. The Amount in Controversy Exceeds \$75,000.**

17. Plaintiffs’ multi-count Petition expressly alleges damages in excess of \$75,000. Specifically, Plaintiffs request the following damages: (1) In relation to Count I, for injurious falsehood, Plaintiffs request damages in excess of \$500,000.00 for compensatory damages and \$500,000.00 for punitive damages; (2) in relation to Count II, for defamation, Plaintiffs seek damages totaling \$5.5 million; (3) in relation to Count III, for intentional infliction of emotional

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<sup>4</sup> The caption of the Petition curiously identifies all of these persons/entities in a single entry as “Elizabeth Arden d/b/a ComplaintsBoard.com, Michelle Reitenger, ComplaintsBoard.com.”

distress, Plaintiffs Robert Johnson and Susan Johnson seek damages totaling \$8 million; and (4) in relation to Count IV, for violation of the Lanham Trademark Act, Plaintiffs seek compensatory damages in excess of \$100,000.00 plus damages of \$1 million for willful violation of the Lanham Act. *See* Exhibit A, Petition ¶¶ 23, 28, 34, 40 and Prayers for Judgment set forth therein.

18. Accordingly, pursuant to the allegations set forth in the Petition, the amount in controversy in this matter exceeds \$75,000, exclusive of interest and costs.

19. Because there is complete diversity of citizenship among and between the Plaintiffs and Defendants, and the amount in controversy exceeds \$75,000, exclusive of interest and costs, this Court has original jurisdiction over this action. *See* 28 U.S.C. § 1332(a).

20. Plaintiffs' Petition states a basis for original jurisdiction under 28 U.S.C. § 1332 and, thus, this action is removable to this Court pursuant to 28 U.S.C. § 1441(a).

### **III. Federal Question Jurisdiction**

21. This Court also has original jurisdiction because the Action arises under the laws of the United States and invokes the federal question jurisdiction of this Court as provided in 28 U.S.C. § 1331 and § 1441(b). Specifically, Plaintiffs' Petition alleges a violation of the federal Lanham Act, 15 U.S.C. § 1051. *See* Exhibit A, Petition (Count IV). The Lanham Act provides: "The district and territorial courts of the United States shall have original jurisdiction and the courts of appeal of the United States (other than the United States Court of Appeals for the Federal Circuit) shall have appellate jurisdiction, of all actions arising under this chapter, without regard to the amount in controversy or to diversity or lack of diversity of the citizenship of the parties." *See* 15 U.S.C. § 1121(A). Thus, Plaintiff alleges a claim which arises under the laws of the United States and over which this Court has original jurisdiction.

22. Since this Court has federal question jurisdiction over this matter, it also has jurisdiction over the remaining claims contained in Plaintiff's Petition under 28 U.S.C. § 1441(c) and/or under the doctrine of supplemental jurisdiction. *See* 28 U.S.C. § 1367.

WHEREFORE, pursuant to 28 U.S.C. §§ 1331, 1332, 1441, and 1446, Defendant Kathleen Heineman respectfully removes to this Court the above-captioned civil Action, which currently is pending in the Circuit Court of Putnam County, Missouri.

Dated: October 9, 2008

Respectfully submitted,

BERKOWITZ, OLIVER, WILLIAMS, SHAW  
& EISENBRANDT LLP

By: /s/ Stacey R. Gilman

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**Attorneys for Defendant Kathleen Heineman**

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was mailed this 9th day of October, 2008, to the following:

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